The Planning Inspectorate

Appeal Decision

Site visit made on 27 March 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4th April 2017

Appeal Ref: APP/U2235/W/16/3165791
Land fronting onto Queen's Avenue and to the rear of 335 Queen's Road, Maidstone, Kent ME16 0ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Christopher Baron of Chailey Homes Limited against the decision of Maidstone Borough Council.
- The application Ref 16/503402/FULL, dated 6 April 2016, was refused by notice dated 23 June 2016.
- The development proposed is the erection of one 2 storey five bedroom house and one single storey two bedroom dwelling with new access onto Queen's Avenue, Maidstone.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The saved policies of the adopted Maidstone Borough Wide Local Plan 2000 (MBWLP) pre-date the publication of the National Planning Policy Framework (the Framework). Examination hearings have taken place regarding the emerging Maidstone Borough Local Plan (EMBLP) and the examining Inspector's Interim Findings, dated 22 December 2016, have been published. The EMBLP is therefore at an advanced stage of preparation but I have not been provided with significant details of the on-going timetable or the extent to which there may remain any unresolved objections to specific policies. I have therefore ascribed weight to relevant saved and emerging policies for the purposes of this appeal in my reasoning, having regard to Paragraphs 215 and 216 of the Framework.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area, including with regard to street trees.

Reasons

4. The appeal site forms part of the substantial rear garden of 335 Queen's Road, which abuts Queen's Avenue at the side, where it is bounded by a ragstone wall. The area, which lies within the urban extent of Maidstone, is predominantly residential in character, comprising mainly large detached houses in spacious plots. The area has a pleasant appearance, which is enhanced by examples of stone walls and mature vegetation, including street trees, which contribute positively to the street scene in Queen's Avenue.

5. The proposal is to construct two dwellings on the site, which would front onto, and take access from, Queen's Avenue. Two sections of the ragstone wall would be removed to facilitate the accesses, and new crossovers would be provided.

6. The site currently provides an open character behind the ragstone wall, when viewed in the Queen's Avenue street scene. The backdrop is of further residential gardens beyond. The proposed development would substantially alter the character of the site by introducing significant built form into this visual relief among built development. The layout is such that the two new dwellings would be set close to each other, out of keeping with the generally spacious arrangement of properties nearby. Furthermore, the overall amount of built coverage would result in relatively short front gardens and limited back garden space, and would appear cramped and of a density out of keeping with the prevailing pattern of development nearby.

7. I note that a two storey dwelling is proposed adjacent to Tall Trees, itself a two storey dwelling, and a single storey dwelling adjacent to The Old Laundry, which is a single storey building. In principle this approach, together with the orientation of the proposed footprints, seeks to respect the context of existing neighbouring properties. However, the overall scale and extent of development proposed, together with the proximity of the new buildings to the boundaries including the front boundary, would result in an overdeveloped appearance which would be harmful to the appearance of the street scene of Queen's Avenue. This harm would be exacerbated by the partial removal of the ragstone wall to facilitate the two accesses. I saw that there are several other openings in the wall, serving existing properties. However, while a significant proportion of the wall would be retained, it is nonetheless a strong positive feature and the removal of two sections as proposed would be detrimental to its visual integrity and thus compound the adverse visual effect of the proposal overall.

8. The adopted London Road Character Area Assessment 2008 (SPD) sets out positive features of the Queen's Road and Queen's Avenue areas, including the spacious, verdant character, the topography which creates views and vistas, the ragstone walls, the enclosure of Queen's Avenue by walls and mature trees, the landscape structure of mature trees, and that more compact recent development is set back from the frontage without harming the spacious character. For the reasons given above, the proposal would be at odds with this identified, distinctive local character.

9. Furthermore, the proposed accesses and crossovers would be positioned close to three street trees situated in the highway verge, beneath their spread and potentially within their root protection areas (RPAs). The Council has raised significant concerns with the proposed tree mitigation measures, including calling into question the achievability of the proposed 'no dig' approach and advising that the local highway authority would not accept the proposed cellular green grid system for the crossover. While the extent of the relevant RPAs has been indicated, this does not appear to have been established in detail. Nonetheless, it seems most likely that the RPAs would be substantially encroached, thus accentuating the need for reasonable certainty in relation to appropriate protection and mitigation measures.

10. While I have no reason to doubt the appellant's intention to retain the trees, I consider that the loss of one or more of them would be detrimental to the established visual character in Queen's Avenue. On the basis of the evidence before me, I am not satisfied that it has been demonstrated that the proposed mitigation measures would be suitable, achievable and effective in preventing immediate or long term harm to the trees. While the trees in question are not subject to statutory protection, I nonetheless consider a precautionary approach is appropriate in light of their contribution to the character and appearance of the area.

11. For these reasons, I conclude that the proposed development would harm the character and appearance of the area, including with regard to street trees. It would therefore conflict with saved Policy ENV6 of the MBWLP, which seeks to ensure that landscape schemes incorporate the retention of existing features which contribute to the quality of the area, including trees and man-made features. In this regard Policy ENV6 is generally consistent with the aims of the Framework and I have afforded it significant weight.

12. The proposal would also conflict with EMBLP Policy DM1 which sets out principles of good design, including responding to and where possible enhancing the local character of the area; Policy DM3 which seeks to protect positive historic and landscape character, including trees with significant amenity value, among other things; Policy DM10 which seeks to ensure that the development of residential garden land would not result in significant harm to the character and appearance of the area, among other things; and Policy DM12 which seeks to ensure that the density of development would not compromise the distinctive character of the area, among other things. I have afforded the emerging policies moderate weight, taking account of their emerging status.

Planning balance

13. The appellant is of the view that the Council cannot demonstrate a five year supply of deliverable land for housing and has provided an appeal decision[1] in support of this view. The examining Inspector's Interim Findings specifically address five year supply, finding that despite a lower rate of housing delivery in the early part of the plan period and the reduced capacity of certain site allocations, the smoothing of the trajectory to address the backlog over ten years rather than five and a reduced level of objectively assessed housing need should strengthen the five year supply position as at 1 April 2016. The Inspector also noted that many additional planning permissions have been granted since that date, indicating that the five year supply should also be strong at 1 April 2017 and in subsequent years[2].

14. While the examination is on-going, the Interim Findings give significant support to the Council's supply position and supersede the findings of earlier appeal decisions in this regard, including the example provided by the appellant dated November 2016. The Council has updated its supply calculations in light of the Interim Findings and now considers that it can demonstrate a 6.11 year supply, which has not been specifically disputed by the appellant. Overall, I consider that there is no substantive evidence before me to indicate that a supply position of at least the level acknowledged by the examining Inspector is not

[1] APP/U2235/W/16/3149542
[2] Interim Findings from the Examination of the Maidstone Borough Local Plan 22 December 2016

currently available in the Borough. I am therefore satisfied that for the purposes of this appeal the Council is able to demonstrate a five year housing land supply as required by Paragraph 49 of the Framework. Relevant policies for the supply of housing are therefore up-to-date and the fourth bullet point of Paragraph 14 is not engaged.

15. I have considered the various benefits that the development might bring, including the social and economic benefits associated with the provision of two homes in a generally accessible location. However, these benefits would be limited in relation to two dwellings and so do not outweigh the significant harm that would arise to the character and appearance of the area.

Other Matters

16. I have considered the appellant's view that tree mitigation measures and details relating to the ragstone wall could be dealt with by condition. Given that I have identified significant concerns with both factors in relation to the main issue above, I consider that it would not be appropriate to address them by condition.

Conclusion

17. For these reasons, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Catherine Jack

INSPECTOR